

## Internal Revenue Service, Treasury

## § 31.3121(b)-2

will be able to exclude such payment or benefit from income under section 127.

[T.D. 7898, 48 FR 31019, July 6, 1983]

### § 31.3121(b)-1 **Employment; services to which the regulations in this subpart apply.**

(a) The provisions of the regulations in this subpart relating to the term “employment” apply with respect to services performed after 1954. Certain provisions also apply with respect to services performed before 1955 for which the remuneration is paid after 1954 (see paragraph (b) of § 31.3121(b)-2. For provisions relating generally to services performed before 1955, see paragraph (a) of § 31.3121 (b)-2. For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 31.3121 (c)-1. For provisions relating to who are employees and who are employers see §§ 31.3121 (d)-1 and 31.3121 (d)-2, respectively.

(b) The taxes apply with respect to remuneration paid after 1954 for services performed before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3121(a)-1 to 31.3121(a)(13)-1 relating to wages.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6983, 33 FR 18015, Dec. 4, 1968]

### § 31.3121(b)-2 **Employment; services performed before 1955.**

(a) *General rule.* (1) Subject to the provisions of paragraph (b) of this section:

(i) Services performed after 1936 and before 1955 which were employment under the applicable law in effect before 1955 constitute employment under section 3121(b).

(ii) Services performed after 1936 and before 1955 which were not employment under the applicable law in effect before 1955 do not constitute employment under section 3121(b).

(2) Except as provided in paragraph (b) of this section, determination of whether services performed before 1955

constitute employment shall be made in accordance with the applicable provisions of law in effect before 1955 and of the regulations thereunder. The regulations applicable in determining whether service performed after 1936 and before 1955 constitute employment are as follows:

(i) Services performed after 1936 and before 1940—26 CFR (1939) Part 401 (Regulations 91).

(ii) Services performed after 1939 and before 1951—26 CFR (1939) Part 402 (Regulations 106).

(iii) Services performed after 1950 and before 1955—26 CFR (1939) Part 408 (Regulations 128).

(b) *Certain services performed before 1955 the remuneration for which is paid after 1954.* (1) Services of the following character performed before 1955, for which remuneration is paid after 1954, constitute employment under section 3121(b):

(i) Agricultural labor, as defined in section 3121(g) (see § 31.3121(g)-1), other than services of the character described in section 3121(b)(1) (relating to services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers), which, at the time performed, constituted employment under section 1426(b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426(b)(1) of such Code, as in effect at the time the services were performed.

(ii) Services not in the course of the employers' trade or business (see paragraph (a)(1) of § 31.3121(a)(7)-1) which, at the time performed, constituted employment under section 1426(b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426(b)(3) of such Code, as in effect at the time the services were performed.

(2) Services of the character described in paragraphs (a) and (b) of § 31.3121(b)(1)-1, which were performed by certain foreign agricultural workers before 1955 and the remuneration for which is paid after 1954, do not constitute employment under section 3121(b), irrespective of whether they constituted employment under section

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1426(b) of the 1939 Code, as in effect at the time the services were performed.

(3) This paragraph has no application to services performed before 1955 and the remuneration for which was paid before 1955.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8309, July 2, 1964]

#### § 31.3121(b)-3 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined in accordance with the provisions of section 3121(b).

(b) *Services performed within the United States.* Services performed after 1954 within the United States (see § 31.3121(e)-1) by an employee for his employer, unless specifically excepted by section 3121(b), constitute employment. With respect to services performed within the United States, the place where the contract of service is entered into is immaterial. The citizenship or residence of the employee or of the employer also is immaterial except to the extent provided in any specific exception from employment. Thus, the employee and the employer may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States—*(1) *In general.* Except as provided in paragraphs (c)(2) and (3) of this section, services performed outside the United States (see § 31.3121(e)-1) do not constitute employment.

(2) *On or in connection with an American vessel or American aircraft.* (i) Services performed after 1954 by an employee for an employer “on or in connection with” an American vessel or American aircraft outside the United States (see § 31.3121(e)-1) constitute employment if:

(a) The employee is also employed “on and in connection with” such vessel or aircraft when outside the United States; and

(b) The services are performed under a contract of service, between the employee and the employer, which is en-

tered into within the United States, or during the performance of the contract under which the services are performed and while the employee is employed on the vessel or aircraft it touches at a port within the United States; and

(c) The services are not excepted under section 3121(b).

(ii) An employee performs services on and in connection with the vessel or aircraft if he performs services on such vessel or aircraft which are also in connection with the vessel or aircraft. Services performed on the vessel by employees as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Similarly, services performed on the aircraft by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(iii) If services are performed by an employee “on and in connection with” an American vessel or American aircraft when outside the United States and the conditions listed in paragraph (c)(2)(i) (b) and (c) of this section are met, then the services of that employee performed on or in connection with the vessel or aircraft constitute employment. The expression “on or in connection with” refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(iv) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which and while the employee is employed on the vessel or